

Internal Revenue Service

District .
Director

FILE COPY

Department of the Treasury

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:
EP/EO

Date: FEB 18 1987

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1954 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure 1.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

[REDACTED]

District Director

Enclosures: 3

ENCLOSURE I

Information submitted with your application shows that [REDACTED] was incorporated [REDACTED], in the state of [REDACTED]. The Articles of Incorporation state that your purpose is to promote the welfare of its members by maintaining and improving [REDACTED] for the benefit of its members, and to exercise all of the rights, duties and powers of the owners' association as set forth in your Declaration of Restrictions for [REDACTED] dated [REDACTED].

Your Declaration of Restrictions for [REDACTED], states in Article [REDACTED]-Common Areas paragraph numbered [REDACTED], the title to the Common Areas shall be vested in the Association subject to the right and easement of enjoyment in and to such Common Areas by its members. Paragraph numbered [REDACTED] states the Common Areas may be used for recreation, hiking, nature study, picnicking, or other uses for the benefit of its members which may be determined by the Association. It further states that all residents of the properties under jurisdiction of the Association and guests accompanying said residents shall have equal access to the Common Areas and all facilities located thereon...

Section 501(c)(4) of the Code, provides in part, that 'civic leagues or organizations not organized for profit but operated exclusively for promotion of social welfare' qualify for recognition of exemption.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides in part, that:

...an organization is operated exclusively for the promotion of social welfare it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements....

Revenue Ruling 74-92, 1974-1, C.B. 116 states in part:

...an organization whose common areas use and enjoyment are controlled and restricted to members of the association does not qualify for exemption under section 501(c)(4) of the Code.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120.

However, it is our opinion that your organization is the type described in section 528 and you may elect to file under section 528 to receive certain tax benefits which, in effect, permits the exclusion of exempt function income. The election by a homeowners association to file under section 528 is to be made by filing Form 1120-H, U.S. Income Tax return for Homeowners Associations.

If you agree with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.